

the five-step conversion process established by Verizon.³⁸⁸ And third, Verizon has developed methods and procedures that remove any requirement to submit new service orders to finalize such conversions.³⁸⁹ This “no order” process meets the needs of both parties to conserve resources that would be wasted submitting individual circuit-by-circuit conversion orders.³⁹⁰

The bad news is that despite an agreement on these fundamentals, the parties have not been able to close the gap on the remaining issues in dispute. First, in order to make use of the five-step process, Verizon requires that AT&T agree to accept all termination liabilities for special access term and/or volume plans under which AT&T may have purchased special access. This linkage of termination liabilities to the bulk conversion process is an extraneous and unnecessary obstacle to implementation of the bulk process, because the applicability—or not—of termination liabilities will be decided by this Commission in Issue III-7-C. There are strong reasons to not apply termination liabilities for conversions of special access to UNE combinations, chiefly because of the obstacles that have prevented AT&T from obtaining the UNE combinations in the first place and forced it to order special access instead. Verizon’s unilateral imposition of interconnection agreement language as a pre-requisite for implementing a conversion required by law simply links unrelated issues, thereby frustrating efficient handling of conversions. The Commission should break that link.

Second, the Guidelines should be subject to a formal change control process. Currently, the Guidelines are simply pages on a web site that Verizon can change

³⁸⁸ Tr. at 265.

³⁸⁹ *Id.* at 269.

informally and unilaterally at will and without notice. Verizon claims that it has adhered to a change control process in practice.³⁹¹ If so, it should have no objection to formalizing that process and making it mandatory. While Verizon has indicated a willingness to consider an accommodation on change control³⁹² nothing has happened since the hearing.

Third, the billing change associated with the conversion should become effective on the date that all required conversion information is received by Verizon. Verizon states that it has instituted a process that gives an effective bill date for special access conversions of 30 calendar days or less from the time that a conversion request is received by Verizon.³⁹³ While this is a step in the right direction, Verizon's 30 day implementation proposal still delays conversion needlessly, because in the vast majority of cases no physical work will be necessary to implement the conversion. As demonstrated in Issue III-7-A, this is simply a billing change. In the rare case where AT&T requests a conversion requiring physical work, AT&T's proposed language provides for pro-ration of the charges based upon the earlier of when Verizon committed to complete the work, or when the work was actually completed.

Verizon may claim AT&T's language ignores the reality of the time to process conversion requests, but it is the effective date of the billing change that is the issue, not the time required to process the requests. The actual completion date does not, by necessity, impact the date upon which a billing change occurs. Verizon routinely defers

³⁹⁰ *Id.* at 273-274.

³⁹¹ *Id.* at 271.

³⁹² *Id.* at 273.

³⁹³ *Id.* at 274.

working customer disconnect orders on their due date (as a workload management tool) but nevertheless renders billing based on the scheduled completion date of the order. Also, Verizon's 30-day billing effectiveness date proves that there is no essential link between the billing date and the actual conversion—which itself is simply a billing change.

Sub Issue III.7.c Should AT&T be bound by termination liability provisions in Verizon's contracts or tariffs if it converts a service purchased pursuant to such contract or tariff to UNEs or UNE Combinations?

Termination liability is a penalty proposed by Verizon based on the premise that the customer terminates the service ordered under a term and/or volume commitment. But by converting from special access services to UNE combinations, AT&T is not terminating the service. Conversions to combinations of UNEs are simply billing changes that in the vast majority of cases do not involve any physical changes to the underlying facilities of a service.³⁹⁴ The same facilities are still being used to provide the same services to the same customers. Verizon's revenue stream, while diminished from previous monopolistic levels, nevertheless continues at cost-recovering TELRIC levels.³⁹⁵ Thus, a termination liability regime that ensures that Verizon retains the full revenues it expects from its monopoly special access services is not appropriate.

It is equitable to eliminate termination liability for conversions from special access to EELs because of changed circumstances. AT&T purchased many of the special access services that it seeks to convert to UNE combinations under duress after the passage of the 1996 Act, because that was the only option then available. Despite the

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Id. at 95.

passage of the Act, Verizon refused to sell UNE combinations for AT&T services such as AT&T Digital Link (“ADL”) whose lines combined local and long distance traffic. Thus, AT&T was faced with the choice to either cease serving customers or pay Verizon’s inflated special access charges. AT&T has been over-paying for the services—and Verizon has been receiving an unjustified windfall—for many years. Now, however, UNE combinations priced at TELRIC are available. Consequently, AT&T should not be held to the termination liabilities that Verizon has unilaterally imposed by tariff or contract.³⁹⁶ In concept, this is no different than the Commission’s “fresh look” initiative that allowed customers to terminate Tariff 12 services without termination liabilities when 800 numbers became portable.³⁹⁷

The Commission, in the *UNE Remand Order*, stated that “any substitution of unbundled network elements for special access would require the requesting carrier to pay any *appropriate* termination penalties under volume or term contracts.”³⁹⁸ The question of course is: what constitutes “appropriate” termination penalties. A guarantee of monopoly profits is not appropriate. Rather, the Commission should consider as

³⁹⁵ *Id.* at 235.

³⁹⁶ In accord is the Kentucky PSC. In reaffirming its arbitration decision to not apply termination liabilities in special access conversions, it ruled that “BellSouth should not benefit from the payment of termination liability charges for AT&T to convert to UNEs, when UNEs should long ago have been made available to AT&T.” Kentucky Public Service Commission, *Petition by AT&T Communications of the South Central States, Inc. and TCG Ohio for Arbitration of Certain Terms and Conditions of a Proposed Agreement With BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. Section 252*, Case No. 2000-465, Order (June 22, 2001)(“Kentucky Order”) at 5.

³⁹⁷ See e.g., *Interexchange Order*, 8 FCC Rcd 2659 (1993).

³⁹⁸ *UNE Remand Order* at fn 985 (emphasis supplied).

factors (1) the recovery of costs, (2) equity of treatment compared to other customers, and (3) what would happen in a competitive market.³⁹⁹

By definition, UNEs priced at TELRIC recover the carrier's costs. AT&T would continue to use the same facilities into the future priced at some approximation of TELRIC, so there is no question that the first factor is satisfied by AT&T's proposal. Again almost by definition, it is self-evident that in a competitive market Verizon would not be able to impose inappropriate termination liabilities. Thus, the third factor is also satisfied by AT&T's proposal.

With respect to the second factor, equality of treatment with other customers, AT&T sought to gain insights on how Verizon treated its *retail* customers subject to contractual arrangements. In its initial response, Verizon focused only on the narrow situation of special access.⁴⁰⁰ Yet, even in this highly limited universe, Verizon provides insight that, where non-CLEC/IXC "contracts" are involved, it is far more liberal in allowing customers to avoid or minimize termination liabilities.

For example, Verizon states that "a request to convert the existing discount plan to a longer commitment period will nullify termination liability."⁴⁰¹ It also admits that "[t]ermination liability does not apply if the customer requests to upgrade service to a higher capacity...so long as the new service is purchased under a long-term agreement of equal or greater length."⁴⁰² Further, Verizon states that "[i]n the event that Verizon initiates a rate increase that affects price of a service by 8% or more, customers may

³⁹⁹ *Id.* at 217, 239-240.

⁴⁰⁰ *See* AT&T Exhibit 21.

⁴⁰¹ *Id.* at (D)(ii).

⁴⁰² *Id.*

cancel their pricing plan for the affected service without termination liability.”⁴⁰³ Finally, Verizon admits that “[t]ermination liability is not applicable if Verizon initiates a rate decrease for service purchased pursuant to a discount pricing plan.”⁴⁰⁴ The Verizon witness waffled on this last point at the hearing,⁴⁰⁵ and for good reason: the availability of UNEs in place of special access is no more than a rate decrease “for service purchased pursuant to a discount pricing plan,” albeit clearly not voluntary on Verizon’s part.

Although Verizon refuses to renegotiate termination liabilities with AT&T where AT&T seeks to replace special access services with UNE combinations, this is clearly not consistent with the way Verizon treats its retail customers.⁴⁰⁶ In Verizon’s Supplemental Responses to AT&T’s interrogatories, Verizon admits that there are several different circumstances in which Verizon will renegotiate its term agreements with retail customers. For example Verizon admits that its contracts with its retail customers may include clauses that permit a customer to reduce its volume commitments because the customer (1) purchases new or replacement services from Verizon for purposes of optimizing its network; (2) suffers a business downturn that renders it unable to satisfy its volume or term commitments; and (3) obtains a competing quote for the services from a Verizon competitor.⁴⁰⁷ The Verizon witnesses could not explain the retail practices

⁴⁰³ *Id.* at (E).

⁴⁰⁴ *Id.* at (E)(ii).

⁴⁰⁵ Tr. at 107 (Fox).

⁴⁰⁶ Indeed, a prerequisite of the Verizon conversion process seems to be that a CLEC must abdicate its rights to challenge termination liabilities in order to convert special access facilities to loop-transport combinations throughout Verizon’s territory. For example, step one (subsection c) of Verizon’s conversion process states that “all applicable termination liabilities and minimum-period penalties will apply pursuant to the tariff terms and conditions for early termination of services.” *See* AT&T Exh. 19 at 3.

⁴⁰⁷ AT&T Exhibit 21, Verizon Supplemental Reply.

of waiving or reducing termination liability,⁴⁰⁸ so these provisions of how Verizon treats its retail customers have to be taken at face value.

The evidence on its face demonstrates that Verizon permits a customer to renegotiate the terms of a contract when the customer's existing arrangement with Verizon is no longer equitable to the customer because of changed circumstances, such as the availability of a more efficient network configuration, or a business downturn, or a better offer from another carrier. These same considerations apply to the elimination of termination liabilities in the case of special access conversions. There can be no question that the current forced use of special access at non-TELRIC rates, to serve customers that AT&T is entitled to serve using UNE combinations priced at some approximation of TELRIC, is not equitable to AT&T. All AT&T is attempting to do is optimize its network, no less than any other Verizon customer that finds a better or less expensive way to obtain the same functionality. If, indeed, AT&T were to be treated like Verizon's other customers, then the termination liabilities should not be enforced.

The Staff raised the question of why a challenge to Verizon's special access tariff termination provisions would not be an acceptable venue for this issue, rather than this arbitration.⁴⁰⁹ As Staff recognized, the short answer is that AT&T is seeking retroactive rather than future relief. Assuming that in the future, unlike the past, AT&T would have a free choice of either special access or UNE combinations, it is not seeking absolution from future special access purchases under term plans.⁴¹⁰ While AT&T's contractual

⁴⁰⁸ Tr. at 109.

⁴⁰⁹ *Id.* at 219, 227-8.

⁴¹⁰ *Id.* at 219, 227-8, 231-2 and 254-5.

language in this regard is not a model of clarity, AT&T's offer to focus it more sharply was of no interest to Verizon.⁴¹¹

Verizon argues that "[t]he tariffed termination charges are designed to make Verizon whole if the services are canceled prematurely."⁴¹² It treats a conversion the same as a termination.⁴¹³ But no services are prematurely cancelled. By the very nature of the conversion (in most cases with no physical work) the very same plant and equipment continues to be used and Verizon is fully compensated for the costs incurred for use of the plant and equipment.

What Verizon is actually contending is that, because of its monopoly in access services, it is entitled to continue to extort supra-competitive rates from customers. Given that EELs are priced at TELRIC, payments designed to compensate Verizon for profits earned in excess of TELRIC cannot be portrayed as "an appropriate amount for service." Thus, any termination liability designed to recover monopoly profits must be considered unjust and unfair. Because Verizon is "made whole" in every reasonable meaning of the phrase and because the very same plant and equipment continue to be used and because the waiver of termination liabilities is consistent with how Verizon treats other customers, it should not receive any termination payments when AT&T converts special access to UNEs.

⁴¹¹ *Id.* at 255. The Staff also asked about a "transitional mechanism" mentioned in AT&T Exhibit 2. *Id.* at 242. That was an erroneous reference. A transitional mechanism for revenue protection is not a part of AT&T's current position.

⁴¹² See Verizon Reply dated May 31, 2001, to AT&T Issue III-7 at 83.

⁴¹³ Tr. at 216.

Issue III.8 Access to UNEs Is Verizon obligated to provide access to UNEs and UNE combinations (such as enhanced extended links and sub-loops) at any technically feasible point on its network, not limited to points at which AT&T collocates on Verizon's premises?

This issue is the same as Issue III.11. Please refer to AT&T's discussion of this issue, *infra*.

Issue III-9 Under the FCC's Rules as currently in effect, must Verizon provide to AT&T unbundled local switching UNEs in all instances except where AT&T individually provides four or more access lines to an individual customer at a specific single customer premises (served from density zone 1 offices, as of 1/1/99, in the top 50 MSAs as identified in the FCC's UNE Remand Order)?

AT&T is not asking the Commission to overturn the 4-line exception in this proceeding, but provides evidence why the agreement should define—in seven specific ways—how this exception can be applied under the Commission's current rules. This evidence is provided in the Direct Testimony of C. Michael Pfau⁴¹⁴ Verizon, in contrast, has neither challenged AT&T's evidence nor supported its position on the implementation of the 4-line exception. It filed no direct testimony, and gave only perfunctory attention to this issue in rebuttal.⁴¹⁵

First of the seven operational clarifications that are necessary is the issue of whether the exception applies per customer or per customer location. In Verizon's view, if a business enterprise had, for example, 50 two-line locations scattered throughout a LATA – including those not in density zone 1,⁴¹⁶ then AT&T could not use the unbundled local switching (“ULS”) UNE to serve any of them, even though each of them

⁴¹⁴ AT&T Exh. 2 at 38-51.

⁴¹⁵ Verizon Exh. 15 at 33-34.

⁴¹⁶ Tr. at 162 and 182.

is under the 4-line limit in the Commission's rules.⁴¹⁷ However, customer location(s), not its identity, was the primary consideration in the Commission's crafting of the current 4-line exception. The Commission sought "to adopt a rule that serves as a reasonable proxy for when competitors are indeed impaired in their ability to provide services they seek to offer."⁴¹⁸ The restrictions it described first narrowed the geography to the localities where competitive switches were most likely to exist. Only then did the Commission's "impairment" analysis consider market segments: "[W]e now consider whether, within these geographic areas, market facts demonstrate that requesting carriers are not impaired without access to local circuit switching for discrete market segments or customer classes."⁴¹⁹ But at no point of its impairment analysis did the Commission consider aggregations of a customer's locations in order to reach the 4-line limit.

The Commission's decision that an ILEC may not take advantage of the 4-line exception in a top 50 MSA unless it offers CLECs Enhanced Extended Loops ("EELs") supports AT&T's view of the Commission's current rule. The Commission noted that "[t]he EEL allows requesting carriers to serve a customer by extending a customer's loop from the end office serving the customer to a different end office in which the competitor is already collocated."⁴²⁰ In discussing the EELs interplay with its ULS restriction, the Commission explicitly states that "[i]f the EEL is available and a requesting carrier seeks

⁴¹⁷ Verizon asserts that it would provide the unbundled local switching in the top 50 MSA density zone 1 area at "a non-UNE rate." Tr. at 182. That of course is entirely beside the point. The Act and the Commission's rules require the availability of UNEs at TELRIC rates, not whatever Verizon would like to charge. This issue pertains to the availability of the ULS UNE at TELRIC rates. The Act was not predicated upon the supposition that a CLEC could compete effectively with Verizon if Verizon were to charge whatever it wished for the ULS.

⁴¹⁸ *UNE Remand Order* at ¶ 276.

⁴¹⁹ *Id.* at ¶ 290.

⁴²⁰ *Id.* at ¶ 288.

to serve a high volume business, the incumbent LEC can provision the high capacity loop and connect directly to a requesting carrier's collocation cage."⁴²¹

AT&T has shown that today's technology requires at least 19 to 20 2-wire loops to a single customer location to justify the use of a high capacity loop at a single location (as opposed to single loops scattered across multiple locations).⁴²² On the other hand, a CLEC cannot efficiently use an EEL to serve a large number of small locations or a small subset of lines at a single large customer location, or even a single modest sized customer at a large MTE.⁴²³ Thus, an important consideration of the ULS limitation must be the number of lines a CLEC serves for a single customer at a single location, for otherwise the ULS limitation will not reasonably relate the impairment considered by the Commission (*i.e.*, the physical ability to serve the customer) and the revenue potential of serving the customer.

Verizon's overreaching interpretation of the ULS limitation has serious adverse implications for the development of competition in Virginia. In the example cited above, Verizon would claim that this is a 100-line customer that no CLEC could serve using ULS, even if the 50 locations were in 50 different towns and cities.⁴²⁴ This would curtail

⁴²¹ *Id.* at ¶ 298.

⁴²² AT&T Exh. 2 at 47.

⁴²³ Tr. at 165-7. Verizon's assertion that unit costs are the same because of the aggregation of customers (*Id.* at 169-170) totally ignores the fact that CLECs, unlike a monopolist incumbent, do not have a large base of customers to start with served by a central office, and do not have ubiquitous switches. A CLEC would be required to haul the traffic to its switch, located elsewhere, which can only be done economically from each collocation if there is sufficient traffic to multiplex to a DS1 or higher level facility. *Id.* at 167, 172-3.

⁴²⁴ Indeed, Verizon admitted that it would apply the limitation to a customer with locations outside the LATA, were it not for the limitations of Verizon's billing system. Tr. at 184.

competitive options for that customer, because it would be uneconomic for a CLEC to connect any of those 50 locations to the CLEC's own switch.

Second, it is clear that Verizon fails to comply with the Commission's rules in the provision of EELs. Verizon states that "[f]or EELs, service that is considered combined is loop transport combination already combined at a particular location. (EELs that are already combined are offered subject to the FCC's use restrictions.)"⁴²⁵ Although not entirely clear from the transcript, Verizon's witnesses at the hearing confirmed Verizon's view that the provision of EELs (when the 4-line switching exemption is invoked by Verizon) is subject to the "safe harbors" provisions of the Commission's rules on the conversion of special access to EELs.⁴²⁶ The Commission, however, has directed that EELs be provided in any instance where Verizon chooses to exercise its prerogative to take advantage of the ULS limitation. There is nothing in the Commission's rule that permits Verizon to restrict the availability of the EEL combination only when the safe harbor conditions are met. Indeed, such an interpretation of the Commission's rules is contrary not only to the Commission's rule, but also to the fundamental intent of that rule and the Commission should make this clear.

Third, Verizon would count locations LATA-wide, irrespective of whether some of them were outside the Zone 1/Top 50 MSA limit.⁴²⁷ Verizon admits that its billing system cannot even accommodate the ULS exemption.⁴²⁸ This further illustrates the importance of applying the rule "per location" rather than "per customer." If the focus is

⁴²⁵ Verizon Reply to AT&T Data Request 3-4.

⁴²⁶ Tr. at 1535.

⁴²⁷ *Id.* at 162-30.

⁴²⁸ *Id.* at 115.

by location, it becomes a simple matter to determine whether or not the location is served from a density zone 1 office in a top 50 MSA.

Fourth, the Commission should also clarify that the 4-line limitation is applicable to the quantity of 2-wire loops as opposed to the number of DS0s. If it doesn't, the ULS exception could be used to deny the ability of CLECs to engage in line splitting where the low frequency spectrum is one DS0 while the high frequency spectrum supports data transfer rates well in excess of 192 kbps (or 3 DS0s). Verizon claims in testimony that it would not consider xDSL derived circuits,⁴²⁹ but that is nowhere stated in Verizon's interconnection agreement language. Furthermore, even if the CLEC were employing the 2-wire loop to support derived voice services, Verizon's DS0 formulation could be interpreted to preclude the derived voice channel from being connected to Verizon's circuit switch. The Commission should make it unambiguous that the ULS limitation pertains solely to 2-wire physical loops that can be used and are practical to connect to the ILEC circuit switch.

Fifth, when Verizon invokes the ULS exemption in a market, it should not be permitted to raise the prices of critical UNEs without reasonable advance notice. Likewise, non-TELRIC pricing must not be applied to the existing base of customers (or those UNEs ordered before the effective date of the exemption) until the prices would otherwise be subject to change (in other words, when the interconnection agreement is re-negotiated). Such advance notice provisions and a prohibition on changes to pricing for the infrastructure of existing customers must be made explicit. The Commission recognized that CLECs require a stable business operating environment in order to attract

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Id. at 174-5.

investment capital.⁴³⁰ Further, customers demand this same stable operating environment, including stable rates. Yet Verizon, under its proposed language, would be able to change the entire economics of prospective market entry as well as change the cost structure for the embedded base of customers already served by the CLEC with no notice whatsoever. The Verizon proposal of 30-days notice⁴³¹ is patently inadequate for a change of fundamental economics as radical as could be caused by the invocation of the ULS exemption. This is especially true where customers have entered into long-term contracts.

Sixth, the list of the precise offices where Verizon intends to impose the ULS exemption on CLECs should be listed in the agreement. Because Verizon need not exercise its option to exempt ULS from TELRIC pricing in all density zone 1 offices in the top 50 MSA under the Commission's existing Rules, it should be obligated to establish precisely where the exemption will be applied. Verizon agrees.⁴³²

Seventh, AT&T and other CLECs should not be forced to re-litigate, renegotiate or arbitrate the ULS exception if and when the Commission rightfully decides that the ULS exception should be lifted or modified. Because Verizon will have no incentive to implement the change expeditiously, the Commission should adopt AT&T's proposal that the exception becomes null and void immediately upon the effectiveness of a Commission rule or order mandating a change or elimination of the ULS exception.

⁴³⁰ *UNE Remand Order* at ¶¶ 9, 105, 114, and 150.

⁴³¹ Tr. at 188.

⁴³² *Id.*

Finally, Verizon's position that it will not immediately implement the ULS exception in Virginia has no bearing on this issue. As Verizon notes, "if Verizon VA later decides to offer EELs throughout density zone 1, it will then implement the local switching exception."⁴³³ Thus, the agreement language proposed by AT&T that clarifies the operation of the ULS exception is necessary even if Verizon does not plan to immediately implement the ULS exception.

Issue III.8 - Access to UNEs - Is Verizon obligated to provide access to UNEs and UNE combinations (such as enhanced extended links and sub-loops) at any technically feasible point on its network, not limited to points at which AT&T collocates on Verizon's premises?

Issue III.11 - MDU Subloop - How should Verizon provide full and non-discriminatory access to all subloop elements at any technically feasible points in order to be consistent with the UNE Remand Order?

The Commission determined in the UNE Remand Order that "a broad definition of the subloop that allows requesting carriers maximum flexibility to interconnect their own facilities ... where technically feasible will best promote the goals of the Act."⁴³⁴ AT&T especially needs access to the subloop element to compete for end users in Multi-Dwelling Units (MDUs) and Multi-Tenant Environments (MTEs), a critically important and unique market opportunity in the development of local exchange competition and a significant component of the market in Virginia.⁴³⁵ AT&T has proposed contract terms that facilitate such access, consistent with the UNE Remand Order, and that identify with precision a number of such points that should be included as particular methods of access

⁴³³ Verizon Exh. 1 at 5.

⁴³⁴ Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238 (rel. Nov. 5, 1999) ("UNE Remand Order") at ¶ 207.

⁴³⁵ AT&T Exh. 2 at 62-68.

to subloops.⁴³⁶ AT&T's terms also facilitate access to on-premises wiring, including the legacy on-premises wiring owned or controlled by Verizon.⁴³⁷

Verizon, on the other hand, essentially obfuscates the issue. It maintains that it is "willing to provide access to multi-tenant buildings at the minimum point of entry as required by applicable law,"⁴³⁸ and that it will do so in a non-discriminatory manner at any technically feasible point.⁴³⁹ But it insists on three general conditions that serve only to raise competitors' costs or otherwise impede access to the MDU/MTE market:

- (1) Verizon requires intervention by its employees to perform cross connects to on-premises wiring;⁴⁴⁰
- (2) Verizon requires collocation as a precondition to CLEC access to on-premises wiring, even as it attempts to give the impression that collocation may not be required in all instances;⁴⁴¹
- (3) Verizon limits the subloop elements that it will provide to its "reasonable set of standardized ... elements,"⁴⁴² even though that list does not include on legacy premises wiring or house and riser cable, which it owns or controls.

To avoid implementation disputes and further litigation, the parties' interconnection agreement should include AT&T's practical and pro-competitive terms rather than Verizon's vague or restrictive language.

⁴³⁶ *Id.* at 80-89; *see* AT&T's Proposed Contract Schedule 11.2.14 at § 4.6.2.3 - .6.

⁴³⁷ AT&T's revised contract terms clarify that its access to such wiring will not require any Verizon intervention, which it should not, since Verizon concedes that the work is the same as when it does not require such intervention (Tr. at 308).

⁴³⁸ Direct Testimony of Verizon UNE Panel of Margaret Detch, et al. ("VZ UNE Panel Direct") at 8.

⁴³⁹ Additional Direct Testimony of Verizon UNE Panel of Margaret Detch, et al. ("Additional VZ UNE Panel Direct") at 9-10.

⁴⁴⁰ VZ UNE Panel Direct at 8-9, Additional VZ UNE Panel Direct at 15-17.

⁴⁴¹ Additional VZ UNE Panel Direct at 10.

⁴⁴² VZ UNE Panel Direct at 8; Tr. at 307-08.

A. The requirement of Verizon employee intervention to access on premises or intrabuilding wiring is unreasonable, unnecessary, and anti-competitive.

To provide service to any end user, AT&T must access the end user's premises or inside wiring and connect its facilities to that inside wiring. On cross-examination, Verizon conceded that a CLEC could access the inside wiring itself, without intervention of a Verizon employee.⁴⁴³ However, where Verizon either owns or controls the premises or intrabuilding wiring, which is the case in MTEs or MDUs constructed prior to May 1, 1986, Verizon requires that AT&T pay to have a Verizon employee be dispatched to remove the jumper wire from the Verizon side of the NID, even though the work is the same as that performed by the CLEC.⁴⁴⁴ Verizon asserts that its position is attributable to vaguely stated concerns about "security, fraud, union, accountability and liability concerns",⁴⁴⁵ or to performance measurement or employee issues.⁴⁴⁶ But merely invoking a litany of unspecified issues provides no basis for Verizon's position.⁴⁴⁷

The ability of a carrier to perform its own cross-connection has been found technically feasible by other state commissions⁴⁴⁸ and has been permitted by the Commission in the UNE Remand Order.⁴⁴⁹ The New York Commission also found

⁴⁴³ Tr. at 304-05.

⁴⁴⁴ Tr. at 308.

⁴⁴⁵ VZ UNE Panel Direct at 9.

⁴⁴⁶ Tr. at 307-08.

⁴⁴⁷ Moreover, Verizon's concerns about performance metrics are unfounded. When troubles in Verizon's network are caused by CLECs, these are non-measured troubles. Nonmeasured troubles are not typically included in any performance remedy plan. Tr. at 531-32.

⁴⁴⁸ See, e.g., MediaOne Telecommunications of Georgia, LLC and BellSouth Telecommunications, Inc, Dockets 10418-U and 10135-U; see also NYPSC decision in House and Riser Trial, Case 00-C-1931.

⁴⁴⁹ UNE Remand Order at 237, 240 ("an incumbent LEC must permit requesting carriers to connect its own loop facilities to the inside wire of the premises through the incumbent LEC's network

following a trial of CLEC access to on-premises wiring, that Verizon's concerns about security, fraud, union, accountability and liability "did not occur in any systematic fashion, had no material impact and were generally correctable."⁴⁵⁰ That Commission specifically concluded that:

The current method of providing cross connections to CLECs in Multi-tenant buildings is costly to both parties, and limits CLECs' flexibility in scheduling service provision to customers. We conclude that direct access to house and riser cable owned by other carriers will reduce costs and time associated with providing certain types of competitive facilities-based telecommunications services, thereby enhancing competition.⁴⁵¹

The Commission should do likewise here, and direct that AT&T's contract terms permitting AT&T to perform the work of re-terminating on-premises wiring to its own loop facilities be adopted. Verizon's unreasonable insistence on having its employees intervene in a process that it acknowledges has no potential for harm to its network should be rejected.

B. Verizon's requirement of collocation as a precondition to CLEC access to subloops or on-premises wiring is also unreasonable, unnecessary, and anti-competitive.

Verizon's proposed contract language maintains that subloop unbundling should be subject to the collocation provisions or to the submission of a Bona Fide Request for access without collocation. Thus, in Verizon's view, anytime AT&T would want to put equipment in an MDU or MTE to access subloops, AT&T would first have to establish collocation with Verizon through use of a CLEC outside plant interconnection cabinet

interface device, or at any other technically feasible point, to gain access to the inside wire subloop network element.").

⁴⁵⁰ See NYPSC Case No. 00-C-1931 – In the Matter of Staff's Proposal to Examine the Issues Concerning the Cross-Connection of House and Riser Cables, at 6 (May 23, 2001).

⁴⁵¹ *Id.* at 8-9. Notably, Verizon's witnesses on this issue were unaware of any problems affecting Verizon's network as a result of CLECs in NY accessing the Verizon network side of the NID to remove the jumper wire. Tr. at 472-73.

(“COPIC or TOPIC”).⁴⁵² Under Verizon’s proposal, to establish that collocation, AT&T must obtain a right of way from the property owner for the placement of the COPIC.⁴⁵³ AT&T must submit a request, wait as many as sixty days for Verizon to respond, and wait then for construction of the collocation site. AT&T must also provide Verizon five year forecasts⁴⁵⁴ and details regarding the services to be provided with the collocated facilities.⁴⁵⁵ And even then, Verizon performs no work until it receives full payment of the work order costs that it establishes when the facilities are requested.⁴⁵⁶ Such onerous requirements represent an unnecessary barrier to entry and should be rejected.

The requirement of collocation at a COPIC is unnecessary. Verizon’s own witnesses acknowledged as much in response to staff questioning⁴⁵⁷ and also acknowledged that it is technically feasible to interconnect AT&T and Verizon’s network directly at Verizon’s feeder distribution interface (“FDI”) on the MDU or MTE premises.⁴⁵⁸ Verizon’s COPIC does nothing but increase the time, money and resources which CLECs must invest up front to provide service to MDU or MTE tenants.⁴⁵⁹

Finally, Verizon maintains that CLECs are also required to enter into a separate

⁴⁵² Tr. at 326-27.

⁴⁵³ Tr. at 366.

⁴⁵⁴ AT&T would be obligated to provide the five year forecast, although Verizon would not necessarily take that forecasted demand into account in building its network. Tr. at 368-69.

⁴⁵⁵ Tr. at 329-32.

⁴⁵⁶ Tr. at 332.

⁴⁵⁷ See Tr. at 476-78.

⁴⁵⁸ See Tr. at 325, 327-28.

⁴⁵⁹ See also Tr. at 485 (WCOM Witness Lathrop) (COPIC requirement would increase costs and impact WCOM’s ability to serve customers). Additionally, Verizon witnesses stated that the need for the COPIC stems from the same concerns as those supporting Verizon’s requirement that only it can remove the jumper wire from the Verizon network side of the NID. But as the NY trial has shown, Verizon’s concerns in this respect are unfounded, and thus should also be rejected here.

agreement with Verizon for collocation of COPIC equipment on a MTE or MDU premises in order to access the feeder subloop element.⁴⁶⁰ Thus, even if a CLEC were able to navigate successfully all the many roadblocks to establish a COPIC, it would still have to face the additional uncertainty of the terms of a separate agreement in order to fully utilize the facility.

C. Verizon's limitation of the available subloop elements to a "reasonable set of standardized ... elements" is unreasonable and inadequate.

Verizon's limitation of available subloop elements only to those fitting within its standardized set is an unreasonable restriction on access to an element that the Commission has determined should be broadly defined.⁴⁶¹ Moreover, its definition of a "reasonable set of standardized ... [subloop] elements" does not even include on premises wiring or house and riser cable which Verizon owns or controls.⁴⁶² This limitation, in addition to being unreasonable, violates the non-discrimination provisions of the Act. Verizon has access to on premises wiring or house and riser cable that it owns or controls, and it must provide CLECs with access to those facilities as well.

The fact that Virginia is a minimum point of entry (MPOE) state does not change this conclusion. There are buildings constructed prior to May 1, 1986, where the demarcation point is not at the MPOE. Verizon still controls that premises or intrabuilding wiring. For a CLEC to gain access to that wiring, either Verizon must

⁴⁶⁰ Tr. at 334-36.

⁴⁶¹ See UNE Remand Order, fn. 1 *supra*.

⁴⁶² While Verizon initially maintained that it did not own any inside wiring in Virginia, it later conceded that it does control the inside wire in buildings constructed prior to May 1, 1986 where the demarcation point has not yet been moved to the MPOE. If the demarcation point is not at the MPOE, Verizon has sole control over the inside wire and Verizon does not allow the CLEC to access that inside wire unless and until the building owner agrees to move the demarcation point to the MPOE. With these policies, Verizon remains the monopoly provider of local service to the residents of that MDU or MTE.

provide it or the demarcation point must be moved to the MPOE. Verizon will not move the demarcation point unless the building owner pays to make that change, thus increasing the likelihood that the building owner will forego it and leaving Verizon as the gatekeeper to the residents of that building. Verizon should be required, therefore, to provide reasonable access to the intrabuilding wiring that it controls.

Issue III.12 – Dark Fiber - Does Verizon have the obligation to make unused transmission media (*i.e.*, spare conductors) available to AT&T and, if so, how is that obligation fulfilled?

Verizon is obligated to make unused transmission media,⁴⁶³ such as dark fiber cable, available to AT&T in the same manner as it is able to utilize such fiber itself, on nondiscriminatory terms and conditions, at technically feasible points—including at the regenerator or optical amplifier equipment and at splice points. Access should not be limited, as Verizon maintains, only to hard termination points. CLECs should be able to have access to and reserve use of available dark fiber consistent with reasonable business practices. Verizon should be required to provide AT&T with dark fiber that conforms to industry standards for transmission quality, just as it does with UNE loops, and for similar reasons.⁴⁶⁴

Verizon argues that because it allegedly does not “reserve” fiber for itself, CLECs should not be permitted to reserve (or “warehouse” or “lock up”) Verizon’s inventory, since such a policy would result in a “land rush” by CLECs seeking to “hoard” available

⁴⁶³ AT&T’s use of the term unused transmission media is intended to codify the Commission’s reference to technology neutral plant. Tr. at 460. Verizon witness Gansert acknowledged that unused copper or coaxial facilities are analogous to dark fiber. Tr. at 461.

⁴⁶⁴ AT&T Exh. 5at 5.

fiber.⁴⁶⁵ And apparently sensitive to the fact that its contract terms formerly afforded it the discretion to do precisely that which it says it does not,⁴⁶⁶ Verizon made superficial changes to the contract terms that merely camouflage the opportunity for discrimination. For Verizon defines dark fiber as only that fiber that is continuous (i.e., not spliced) between two central offices or between a C.O and a customer premises. All other media, including fiber that may not be lit but that doesn't otherwise fit this definition, because, for example, it terminates elsewhere than in an office or has a splice, would not be available to CLECs even though it would be to Verizon.⁴⁶⁷ The rights that AT&T seeks through its contract terms would eliminate this disparity, and would not result in CLEC hoarding, but instead in the assurance that AT&T could also avail itself of unused capacity to meet its customer needs, as Verizon proposes to preserve for itself.

Just as Verizon's definitional limits should be rejected, so too should the other limitations that Verizon seeks to place on AT&T's access to dark fiber. By limiting AT&T's access only to continuous fiber within a Verizon cable sheath and only at hard termination points, Verizon seeks to exclude from its obligations the provision of access to fiber strands that may not be continuous but that are accessible, available, and otherwise physically connected to its network, but that may need only to be spliced at the very splice points that Verizon itself would employ to perform the splicing were it to

⁴⁶⁵ Direct Testimony of Verizon UNE Panel of Margaret Detch, et al. ("VZ UNE Panel Direct") at 16-17.

⁴⁶⁶ Section 11.2.15.3 states "Verizon may use dark fiber loops and dark fiber IOF for maintenance purposes and to satisfy customer orders for fiber related services." The clause formerly contained the word "reserve" (instead of "use"), and formerly contained the phrase "or for future growth" (which was dropped at the hearing, Tr. at 302). However, these changes do nothing to resolve the issue of discrimination if Verizon is permitted to define unused transmission media in a manner that allows it to access capacity that it can deny to CLECs.

⁴⁶⁷ Tr. at 461-62.

utilize the fiber for itself.⁴⁶⁸ That is not, as Verizon maintains,⁴⁶⁹ creating new fiber routes; it is simply assuring reasonable access to the full range of unused transmission media.

Notably, the Massachusetts Department of Telecommunications and Energy specifically required Verizon to include in its tariff the ability of CLECs to access dark fiber at existing splice points.⁴⁷⁰ Since Verizon's own witnesses admitted both that it is technically feasible to do so and that Verizon would itself serve a customer in that manner, CLEC access at splice points as AT&T proposes should be included in the contract.

AT&T's concerns about the dark fiber provisioning process and about having to undertake field surveys or inquiries in order to determine the availability of Verizon's dark fiber were confirmed at the hearing.⁴⁷¹ Even as it argues that it treats CLECs "no differently than it treats itself,"⁴⁷² Verizon witnesses described a process that requires CLECs to have to go so far as to submit two separate inquiries just to find out about the

⁴⁶⁸ See Tr. at 374-78, 398-400. (Verizon will not allow a CLEC to access Verizon's dark fiber at splice cases or at places along the fiber route). Verizon acknowledges that there are fibers accessible at other points in its network, and that it can and does "stub" those fibers in order to return later and complete, by splicing those fibers, a planned route for itself. Tr. at 405-07, 457-59. Yet notwithstanding this concession about its own practices, Verizon maintains that CLEC access at such points is not permitted. Tr. at 400.

⁴⁶⁹ See Rebuttal Testimony of Verizon UNE Panel of Margaret Detch, et al. ("VZ UNE Panel Rebuttal") at 18.

⁴⁷⁰ See Tr. at 381. Not surprisingly, although Verizon refuses to include such access as ordered in Massachusetts, it readily exports Commission-ordered language in other parts of the dark fiber contract provisions that afford it more latitude (see 25% limitation as ordered by the Texas Commission, Tr. at 438).

⁴⁷¹ VZ UNE Panel Direct at 23 (urging CLECs to perform a survey so that it may "make a more educated decision as to whether the available dark fiber falls within its design criteria for the telecommunications service it proposes to deploy over the fiber."; see also Tr. at 381-84 (explaining the time and costs involved in determination of available dark fiber routes).

⁴⁷² VZ UNE Panel Direct at 23.

availability of dark fiber between two desired locations.⁴⁷³ Verizon does not contend that it imposes upon itself the time and expense of performing such an inquiry or inquiries; rather it acknowledges that it simply checks its records and then uses its field surveys only to “confirm”⁴⁷⁴ what its records must have already revealed – the availability and transmission characteristics of its fiber.

AT&T requests a simple provisioning process, similar to the parallel provisioning trial underway in Pennsylvania, whereby AT&T could reserve dark fiber for a commercially reasonable ninety day period to enable AT&T to build facilities to use the dark fiber and to assure that the fiber would still be available once the facilities were built.⁴⁷⁵ But notwithstanding the pendency of the Pennsylvania trial and the ability to implement such a parallel process on a manual basis, Verizon refuses to do so in Virginia until the trial is deemed concluded and the process is mechanized.⁴⁷⁶

Finally, contrary to Verizon’s assertion, AT&T does not seek to have Verizon “reengineer its network” by asking that it upgrade electronics if that would resolve the impediment to AT&T’s access to dark fiber. Certainly, if Verizon needed that capacity, it would upgrade the electronics for itself, and AT&T seeks only similar treatment. The Commission acknowledged, in the UNE Remand Order, that “the capacity of fiber can be increased many fold simply by increasing the power of the electronics that light it”⁴⁷⁷ and

⁴⁷³ Tr. at 383-84.

⁴⁷⁴ VZ UNE Panel Direct at 23.

⁴⁷⁵ Tr. at 463-64.

⁴⁷⁶ Tr. at 468-69.

⁴⁷⁷ UNE Remand Order at ¶ 198.

AT&T's request merely seeks to insure that the capacity of fiber made available to CLECs not be artificially constrained.

Issue V.3 & V.4.a UNE-P Routing and Billing Should reciprocal compensation provisions apply between AT&T and Verizon for all traffic originating from UNE-P customers of AT&T and terminating to other retail customers in the same LATA, and for all traffic terminating to AT&T UNE-P customers originated by other retail customers in the same LATA?

AT&T's proposal is simply that *all* AT&T UNE-P local and intraLATA traffic originating, terminating and transiting over Verizon's network should be treated in exactly the same manner as Verizon treats its own comparable traffic.⁴⁷⁸ AT&T would not pay access charges because the calls never touch AT&T's network. Rather, such calls would be compensated under a reciprocal compensation regime. This would include AT&T UNE-P calls to and from 3rd party carriers. Verizon should treat UNE-P-based calls to and from third party CLECs as its own traffic for the purpose of setting reciprocal compensation obligations. This regime simplifies "transit traffic" compensation arrangements. It eliminates the need for costly and time-consuming processes to negotiate and manage multiple interconnection agreements among all local service providers in Verizon's territory.

For Verizon, this approach also eliminates the requirement that Verizon act as a clearinghouse for the creation and exchange of message records among the various CLECs operating in its territory, thereby relieving Verizon of the costs of maintaining that service. Verizon, through its agreements with the third parties, would obtain

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Issues V.4.A and V.3 are identical and were separately stated in AT&T's Petition in error.

reciprocal compensation for carrying transit traffic. For traffic from AT&T's UNE-P customers, Verizon would collect reciprocal compensation from the third party as if it had originated the traffic for termination by the third party, although it did not. The collection of such charges compensates Verizon for the use of its network.

There is no disagreement between the parties that this regime would fully compensate Verizon for all its costs when the AT&T UNE-P call is to or from a Verizon customer.⁴⁷⁹ The sole remaining dispute is whether it would compensate Verizon for calls from an AT&T UNE-P customer routed through Verizon to a 3rd party CLEC customer. Verizon claims not. However, that is not correct. AT&T does not dispute the call flow compensation for such calls as outlined by Mr. Gabrielli.⁴⁸⁰ Mr. Gabrielli described the call flow compensation as follows:

In other words, we would charge originating local switching, a common transport, the commonly transport rate elements, and a terminating local switching. In other words, we recover our costs for transiting that call, and we also are recovering the terminating charges that we are ultimately going to be billed from the facility-based CLEC.

However, AT&T's agreement with the compensation scenario outlined by Mr. Gabrielli is predicated on the assumption that for calls in the opposite direction (a 3rd party CLEC customer call routed through Verizon to an AT&T UNE-P customer) AT&T does not incur any transport or terminating UNE-P charges from Verizon for terminating the 3rd party CLEC customer call. Rather, Verizon would bill terminating Reciprocal Compensation charges to the 3rd party CLEC originating the call, as if it had itself

⁴⁷⁹ Tr. at 541-543.

⁴⁸⁰ *Id.* at 553 lines 5-20.

terminated the call, and keep the proceeds.⁴⁸¹ When these two call flow compensation scenarios are both in effect, then Verizon is compensated for all of its costs, including the terminating Reciprocal Compensation charges.

This is the status quo that the New York PSC maintained and that AT&T stated it could live with in response to Ms. Preiss' question.⁴⁸² The NYPSC stated as follows:

Verizon does not collect either transport or termination charges when a third-party carrier terminates local calls to an AT&T UNE-Platform customer. Instead, it keeps the reciprocal compensation it receives from the carrier that AT&T would otherwise be entitled to....With respect to an AT&T UNE-Platform customer's local calls that terminate to a third-party carrier, Verizon passes the carrier's reciprocal compensation charges, and usage charges, to AT&T for it to pay. AT&T accepts these practices and states that they have worked reasonably well.⁴⁸³

In the New York status quo that the NYPSC maintained in its arbitration decision, Verizon in essence acts symmetrically as an agent for the 3rd party CLEC in one direction, and for AT&T in the other direction.

If, on the other hand, AT&T is required to bill the 3rd party CLEC for the terminating Reciprocal Compensation due it, as Verizon seems to want,⁴⁸⁴ while at the same time Verizon collects terminating Reciprocal Compensation from AT&T for traffic in the opposite direction, then AT&T would be put in the untenable position of having to negotiate one half of an interconnection rate with the 3rd party CLEC. AT&T would be placed in the position of negotiating a rate for 3rd party CLEC calls terminating on AT&T UNE-P, but not AT&T UNE-P calls terminating on the 3rd party CLEC, which would be governed by the interconnection agreement between the 3rd party CLEC and Verizon. As

⁴⁸¹ *Id.* at 550.

⁴⁸² *See Id.* at 555-556.

⁴⁸³ New York PSC Case 01-C-0095, *Order Resolving Arbitration Issues* (July 30, 2001) at 47.

AT&T argued to the New York PSC, if the status quo were to be changed as Verizon has urged, then AT&T should be given the right to negotiate reciprocal compensation rates with 3rd party CLECs for both originating and terminating traffic transiting Verizon's network.⁴⁸⁵

Issue V.4 Should all calls originating and terminating within a LATA be subject to the same compensation arrangements without regard to end-user classification or type of traffic?

The distinction between “local” and “toll” calls is a purely artificial one that dictates what a competing carrier must pay for call termination—either excessive access rates or the much lower call termination rates. Under AT&T's proposal, all intraLATA and local calls originated by AT&T customers that Verizon subsequently terminates on its own network (or hands off to another party for termination) should be subject to reciprocal compensation arrangements between AT&T and Verizon. Likewise, any intraLATA and local calls Verizon delivers to AT&T customers that are originated by Verizon customers or are originated by third parties but delivered by Verizon should also be covered by reciprocal compensation.

In their capacity as local exchange carriers, both AT&T and Verizon originate calls on their respective networks that must be terminated to the other carrier's network. AT&T and Verizon deliver all intraLATA traffic—local or toll—over the same trunk groups. From where a customer originates a call should be immaterial to the rates either carrier will charge the other for the termination of that call. Therefore, all calls originated on either carrier's network should be governed by a unified reciprocal compensation

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See Tr. at 548.

regime, by applying the rates for transport and termination that govern compensation between competing local exchange carriers.

The Commission has already recognized that different rates or compensation schemes for local and toll traffic, and/or for voice and data traffic, are not supported by differences in underlying costs of providing these services. The same facilities are used to complete toll calls as are used to complete local calls. Yet, Verizon continues to charge different rates to competing carriers, depending on whether the call is characterized as “local” or “toll” as defined by Verizon’s view of appropriate calling areas. Artificial discrepancies in compensation where costs are the same leads to economic inefficiencies and adverse effects on competition, as the Commission has recognized in instituting the *Unified Intercarrier Compensation Regime* rulemaking.⁴⁸⁶ By requiring that all calls that originate and terminate within a LATA are subject to call termination charges rather than access charges, the Commission will be putting Verizon and AT&T on a comparable footing with regard to the costs of terminating calls and, at the same time, will be pave the way for lower prices and new service plans.

Verizon’s position increases the administrative costs associated with transport and termination. Today each carrier incurs costs to track the originating point of every call so that it can be reconciled in the billing settlement process as either “local” or “toll.” That distinction will not be necessary with a unified compensation mechanism. Moreover,

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New York Order at 48.

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Re: Notice of Proposed Rulemaking, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92 (April 19, 2001). See Separate Statement of Chairman Powell: “As all regulators and businesses know, however, the rates for interconnecting with the phone network vary depending on the type of company that is doing the interconnecting. In a competitive environment, this leads to arbitrage and inefficient entry incentives, as companies try to interconnect at the most attractive rates. I support this *Notice* because it seeks comment on how

going forward, the change AT&T advocates will reduce the costs of changing calling plans from “toll” to “local” because such changes would not require changes in the way terminating calls are tracked.

Issue V.7. Should Verizon Commit To Specific Intervals For Local Number Portability Provisioning For Larger Customers?

Verizon should be required to commit to a five business day interval to port 200 or more telephone numbers *unless* Verizon can provide AT&T with a justification as to why the order cannot be completed within five business days.⁴⁸⁷ Several carriers, including PacBell and AT&T, have demonstrated that it is technically feasible to commit to a five business day interval for porting more than 200+ lines.⁴⁸⁸ Verizon’s own witness agreed that it technically feasible to port orders to port 200+ lines within five days.⁴⁸⁹

AT&T needs established and predictable intervals for porting 200+ lines to effectively market its services and to compete with Verizon for large, sophisticated—and demanding—business customers. “We’ll get back to you” is not what the customer

we can make these varied intercarrier compensation regimes more consistent with each other and, thus, with competition.”

⁴⁸⁷ Specifically, AT&T recommends the following language:

The carrier from which a telephone number is being ported shall, upon receipt of a valid LSR, be able to meet a three (3) calendar day maximum porting interval for all residential customers and a five (5) calendar day maximum porting interval for all business customers. The ported to carrier may, at its sole discretion, request a due date of greater than the aforementioned time frames for a specific customer. Upon good cause shown, the ported from carrier may establish a porting interval greater than five calendar days for an order involving porting of more than 200 lines.

⁴⁸⁸ No industry-standard intervals govern local number portability provisioning for larger customers. Verizon Exh. 1 at 16; Tr. at 577. There may be other companies who choose not to port 200+ numbers within five days, such as Qwest. Qwest’s choice not to commit to a five day porting interval does not demonstrate technical infeasibility. It is simply the business decision of a monopolist.

⁴⁸⁹ Tr. at 578.

wants to hear.

Verizon argues that porting 200+ numbers can sometimes involve additional labor which precludes it from committing to a five business day interval.⁴⁹⁰ However, Verizon provided no record evidence to support its claim⁴⁹¹ and its assertions of “force and load” constraints should be rejected as unfounded.⁴⁹²

In any event, the exception should not swallow the rule. AT&T recognizes that there may be limited instances where additional work may require more than five business days to port the numbers. With that in mind, Verizon should commit to five business days for porting more than 200 numbers as a rule *unless* Verizon can provide AT&T with a justification as to why the work cannot be done within five business days.⁴⁹³ AT&T’s proposed contract language gives Verizon flexibility, in legitimate circumstances, to contact AT&T and inform AT&T that it cannot meet the five-day interval.⁴⁹⁴

⁴⁹⁰ See e.g., Verizon Exh. 24 at 24.

⁴⁹¹ AT&T Exh. 25; Tr. at 579-580. When asked how many orders to port 200+ lines required additional labor or provisioning, Verizon responded that it did not maintain such records. Moreover, when asked how many orders to port 200+ lines risked overloading the NPAC links or actually overloaded the NPAC links, Verizon conceded that no such orders risked overloading the NPAC links. AT&T Exh. 25.

⁴⁹² See e.g., Verizon Exh. 24 at 24. Verizon’s own comparable practices also demonstrate the reasonableness of AT&T’s proposed five day interval. If a Verizon customer wants to regrade service for more than 50 POTS lines (work that is largely system- and software-related as is porting), Verizon performs those regrades in an established 5-day interval. If Verizon can do that in five days, it can certainly perform the systems and software work needed to port 200 or more lines, without hot cuts, within an established five day interval. AT&T Exh. 6P at 23. Notably, Verizon neither disagreed with nor contested this comparison in its Rebuttal Testimony nor during the hearing.

⁴⁹³ AT&T Exh. 6P at 9-10.

⁴⁹⁴ Instead of an established five day interval, Verizon would provide AT&T with a “negotiated interval” for orders to port more than 200 lines. Verizon Exh. 1 at 26; Verizon Exh. 24 at 22. This is unacceptable, for obvious reasons. Verizon has every incentive to delay porting as long as it can, especially on larger orders. Moreover, by Verizon’s own statements, it dictates the interval

Issue V. 12 Should Verizon Be Required To Support Off Hours Porting?
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Customers want the convenience of weekend service connections. Verizon admitted that it ports telephone numbers for its own end user customers and for CLECs during off-hours and weekends.⁴⁹⁵ To assure compliance with the non-discrimination provisions of the Telecommunications Act, this admission alone requires Verizon to support off-hours porting for CLECs.

Verizon contends that its proposed “weekend porting solution” is adequate, but AT&T has demonstrated that it is not. Some adjustments must be made to Verizon’s “weekend porting solution” to ensure that AT&T can effectively and efficiently port customers’ lines during the off hours without undue risk of loss of customer dialtone:

1. Verizon Must Accept Orders From AT&T With A Saturday Or A Sunday Due Date.

Under Verizon’s proposed “weekend porting solution,” if AT&T sends an order with a Saturday or a Sunday due date, Verizon’s system will automatically reassign the due date to the next business day, typically a Monday.⁴⁹⁶ This is unnecessary. Even if Verizon has not determined what would be needed to reconfigure its systems to accept an order for a Saturday or a Sunday port, Verizon should be required to do so for its *wholesale* customers — particularly in light of the fact that Verizon manages to use

to AT&T. It does not negotiate an interval with AT&T. Verizon Exh. 1 at 27; *see also* AT&T Exh. 6P at 20. Verizon’s proposal should be rejected.

⁴⁹⁵ Tr. at 570.

⁴⁹⁶ *See* VZ-VA response to AT&T I-41, attached in Exhibit 1 to AT&T Exh. 12.

Saturday and Sunday installation dates for its *retail* customers.⁴⁹⁷

2. Verizon Must Provide AT&T With Limited Technical Support.

There will be occasions where AT&T needs “snapback” support from Verizon.⁴⁹⁸

Verizon admitted that it provides the needed technical support.⁴⁹⁹ The contract language should capture the affirmative obligation to provide this technical support.

3. Verizon Should Ensure That Its Service Order Administration Connectivity To NPAC Is Available To Permit Off-Hour Installations.

Verizon should ensure that its Service Order Administration (“SOA”) connectivity to NPAC is available for processing all required number portability activities at all times (except the limited times when NPAC itself is unavailable to perform needed maintenance). Verizon admitted that it complies with this requirement.⁵⁰⁰

4. To Prevent “Double Billing” of Customers, Verizon Must Discontinue Billing A Ported Customer At The Date And Time The Port Is Activated, As Reported By NPAC To Verizon.

To avoid double-billing the end user customer, Verizon must discontinue billing a ported customer at the date and time the port is activated, as reported by NPAC to Verizon.⁵⁰¹ By billing the customer for days after the port has been activated, Verizon

⁴⁹⁷ AT&T Exh. 6P at 8; VZ-VA Response to AT&T Data Request 8-7, attached in Exhibit 1 to AT&T Exh. 12 (Verizon representatives can and do enter a Saturday due date when scheduling a Saturday installation).

⁴⁹⁸ Snapback support is needed to ensure that the end user customer does not lose dial tone and the ability to receive inbound calls and requires a Verizon technician to stop the port, *i.e.*, “snapback” the number, so that the translations are automatically not removed from Verizon’s switch.

⁴⁹⁹ Tr. at 575.

⁵⁰⁰ Verizon Response to AT&T I-42, attached in Exhibit 1 to AT&T Exh. 6P.

⁵⁰¹ Under Verizon’s “weekend porting solution,” Verizon stops billing the customer on the due date on the LSR which may be as many as two days after the port has been activated. Verizon Response to AT&T Data Request I-40, attached in Exhibit 1 to AT&T Exh. 6P.

bills the customer for service it is not providing, in violation of its tariff requirements. This could even be construed as cramming, *i.e.*, charging customers for services they did not authorize or, as in this event, had already cancelled. The New York Public Service Commission recently acknowledged the need for Verizon to terminate billing coincident with the port, not days later.⁵⁰² Again, the contract language should capture this requirement.

ISSUE V. 12.a Should Verizon Commit To A Three Calendar Day Porting Interval For Residential Customers?

AT&T's request for a committed three calendar day interval is reasonable, technically feasible, and necessary to encourage the development of competition in Virginia's local exchange market.⁵⁰³ Customers want service installed quickly, and AT&T wants to deliver it quickly.

Verizon's own practices demonstrate the reasonableness and technical feasibility of the three calendar day interval. In the Pittsburgh area, where AT&T is porting simple POTS numbers from Verizon on a daily basis, Verizon is already returning the FOC and confirming the port order with NPAC within three days.⁵⁰⁴ Yet

⁵⁰² See Order, New York PSC Case No. 01-C-0095, July 30, 2001, at 85 n. 104. ("Verizon should cease billing the customer at the time the port actually takes place; it should not be a function of when the trigger is removed by Verizon.")

⁵⁰³ AT&T has proposed the following contract language:
The carrier from which a telephone number is being ported shall, upon receipt of a valid LSR, be able to meet a three (3) calendar day maximum porting interval for all residential customers and a five (5) calendar day maximum porting interval for all business customers.

⁵⁰⁴ Tr. at 568.

Verizon refuses to commit to a three calendar day interval,⁵⁰⁵ arguing that its performance need not be any better than the lowest common denominator established by Qwest and the Local Number Portability Administration Working Group.⁵⁰⁶ But that claim is at odds with reality. Verizon has already demonstrated its technical capability to port lines, without coordinated hot cuts, within three calendar days..⁵⁰⁷

Verizon has no legitimate objection to putting the three calendar day interval in the interconnection agreement.⁵⁰⁸ Verizon has stated that it will not increase the existing porting interval.⁵⁰⁹ Thus, it will not be harmed by the contract term AT&T recommends.⁵¹⁰

⁵⁰⁵ There was some discussion of Qwest's three business day interval. Tr. at 559-564. Even if Qwest ports lines within three business days, instead of three calendar days, that does not undermine the demonstrated technical feasibility of a three calendar day porting interval for simple POTS lines. Verizon meets a three calendar day interval in practice. Verizon Exh. At 15 at 22; Tr. at 575-576. AT&T meets the three calendar day interval. AT&T Exh. 6P at 5. It is technically feasible. Verizon should be required to comply.

⁵⁰⁶ Over a year ago, the Local Number Portability Association Working Group ("LNPAWG"), acting as technical consultant to the North American Numbering Council (NANC), issued a report recommending, among other things, that the standard 4-day porting interval not be reduced to three days at that time. It should be noted that the LNPAWG's year-old recommendation that the interval not be shortened is not final. Second, parties are not required to follow these intervals; they are only guidelines and parties are free to agree to different intervals. Finally, Verizon did not present any information at NANC that it cannot meet the proposed shortened intervals. In fact, Verizon's established practice demonstrates that it can.

⁵⁰⁷ Verizon Exh. 15 at 22; 10/04/01 Tr. at 575-576. AT&T also meets the three calendar day interval. AT&T Exh. 6P at 5.

⁵⁰⁸ Verizon has stated that it does not typically insert intervals in interconnection agreements, but, instead, maintains the intervals on Verizon's website, which is under the complete control of Verizon. Tr. at 576. Cf. AT&T discussion of Issues III.18 and VII.12 regarding the need for contractual obligations to bind both parties throughout the term of the interconnection agreement. Interestingly, Verizon acknowledged that it does include other intervals in interconnection agreements, including, for example, the interval within which Verizon will respond to a CLEC request for a TOPIC arrangement regarding access to MDU subloops. Tr. at 331-332. Moreover, Verizon witness Rousey stated that Verizon's interconnection agreements contain provisions for "largest interval possible." *Id.* Here, that would be three days. Verizon should have no objection to including this interval in the interconnection agreement.

⁵⁰⁹ Tr. at 581-582.

⁵¹⁰ If the Commission rejects AT&T's request for a three calendar day interval, despite its demonstrated technical feasibility, Verizon should, at a minimum, be required to commit in the